

32B-5-101. Title.

This chapter is known as the "Retail License Act."

Enacted by Chapter 276, 2010 General Session

32B-5-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-5-201. Application requirements for retail license.

(1) (a) Before a person may store, sell, offer for sale, furnish, or permit consumption of an alcoholic product on licensed premises as a retail licensee, the person shall first obtain a retail license issued by the commission, notwithstanding whether the person holds a local license or a permit issued by a local authority.

(b) Violation of this Subsection (1) is a class B misdemeanor.

(2) To obtain a retail license under this title, a person shall submit to the department:

(a) a written application in a form prescribed by the department;

(b) a nonrefundable application fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying;

(c) an initial license fee:

(i) in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying; and

(ii) that is refundable if a retail license is not issued;

(d) written consent of the local authority;

(e) a copy of the person's current business license;

(f) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;

(g) a bond as specified by Section 32B-5-204;

(h) a floor plan, and boundary map where applicable, of the premises of the retail license, including any:

(i) consumption area; and

(ii) area where the person proposes to store, sell, offer for sale, or furnish an alcoholic beverage;

(i) evidence that the retail licensee is carrying public liability insurance in an amount and form satisfactory to the department;

(j) evidence that the retail licensee is carrying dramshop insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(k) a signed consent form stating that the retail licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the retail licensee;

(l) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and

(m) any other information the commission or department may require.

- (3) The commission may not issue a retail license to a person who:
 - (a) is disqualified under Section 32B-1-304; or
 - (b) is not lawfully present in the United States.
- (4) Unless otherwise provided in the relevant part under Chapter 6, Specific Retail License Act, the commission may not issue a retail license to a person if the licensed premises does not meet the proximity requirements of Section 32B-1-202.

Enacted by Chapter 276, 2010 General Session

32B-5-202. Renewal requirements.

- (1) A retail license expires each year on the day specified in the relevant part under Chapter 6, Specific Retail License Act, for that type of retail license.
- (2) To renew a person's retail license, a retail licensee shall, by no later than the day specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed, submit:
 - (a) a completed renewal application to the department in a form prescribed by the department; and
 - (b) a renewal fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of the retail license effective on the date the existing retail license expires.

Enacted by Chapter 276, 2010 General Session

32B-5-203. Commission and department duties before issuing a retail license.

- (1) (a) Before the commission may issue a retail license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a retail license should be issued.
- (b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.
- (2) Before issuing a retail license, the commission shall:
 - (a) determine that the person filed a complete application and is in compliance with:
 - (i) Section 32B-5-201; and
 - (ii) the specific licensing requirements specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying;
 - (b) determine that the person is not disqualified under Section 32B-1-304;
 - (c) consider the locality within which the proposed licensed premises is located, including:
 - (i) physical characteristics such as:
 - (A) condition of the licensed premises;
 - (B) square footage; and
 - (C) parking availability; and

- (ii) operational factors such as:
 - (A) tourist traffic;
 - (B) demographics;
 - (C) population to be served;
 - (D) proximity to and density of other state stores, package agencies, and retail licensees; and
 - (E) the extent of and proximity to any community location;
- (d) consider the person's ability to manage and operate a retail license of the type for which the person is applying, including:
 - (i) management experience;
 - (ii) past retail alcoholic product experience; and
 - (iii) the type of management scheme to be used by the retail licensee;
- (e) consider the nature or type of retail licensee operation of the proposed retail licensee, including:
 - (i) the type of menu items that will be offered and emphasized;
 - (ii) whether the retail licensee will emphasize service to an adult clientele or to minors;
 - (iii) the proposed hours of operation;
 - (iv) the seating capacity of the premises; and
 - (v) the estimated gross sales of food items; and
 - (f) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-5-204. Bond for retail license.

- (1) (a) A retail licensee shall post a cash bond or surety bond:
 - (i) in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying; and
 - (ii) payable to the department.
- (b) A retail licensee shall procure and maintain the bond required under this section for as long as the retail licensee continues to operate as a retail licensee.
- (2) A bond required under this section shall be:
 - (a) in a form approved by the attorney general; and
 - (b) conditioned upon the retail licensee's faithful compliance with this title and the rules of the commission.
- (3) (a) If a surety bond posted by a retail licensee under this section is canceled due to the retail licensee's negligence, the department may assess a \$300 reinstatement fee.
- (b) No part of a bond posted by a retail licensee under this section may be withdrawn:
 - (i) during the period the retail license is in effect; or
 - (ii) while a revocation proceeding is pending against the retail licensee.
- (4) (a) A bond posted under this section by a retail licensee may be forfeited if the retail license is revoked.
- (b) Notwithstanding Subsection (4)(a), the department may make a claim against a bond posted by a retail licensee for money owed the department under this

title without the commission first revoking the retail license.

Enacted by Chapter 276, 2010 General Session

32B-5-205. Conditional retail license.

(1) As used in this section:

(a) "Conditional retail license" means a retail license that:

(i) conditions the holder's ability to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises on the person submitting to the department a copy of the holder's current business license before obtaining a valid retail license; and

(ii) provides that the holder will be issued a valid retail license if the holder complies with the requirements of Subsection (3).

(b) "Valid retail license" means a retail license issued pursuant to this part under which the holder is permitted to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises.

(2) Subject to the requirements of this section, the commission may issue a conditional retail license to a person if the person:

(a) meets the requirements to obtain the retail license for which the person is applying except the requirement to submit a copy of the person's current business license; and

(b) agrees not to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises before obtaining a valid retail license.

(3) (a) A conditional retail license becomes a valid retail license on the day on which the department notifies the person who holds the conditional retail license that the department finds that the person has complied with Subsection (3)(b).

(b) For a conditional retail license to become a valid retail license, a person who holds the conditional retail license shall:

(i) submit to the department a copy of the person's current business license; and

(ii) provide to the department evidence satisfactory to the department that:

(A) there has been no change in the information submitted to the commission as part of the person's application for a retail license; and

(B) the person continues to qualify for the retail license.

(4) (a) A conditional retail license expires nine months after the day on which the commission issues the conditional retail license, unless the conditional retail license becomes a valid retail license before that day.

(b) Notwithstanding Subsection (4)(a), the commission may extend the time period of a conditional retail license an additional three months if the holder of the conditional license can show to the satisfaction of the commission that the holder of the conditional license:

(i) has an active building permit related to the licensed premises; and

(ii) is engaged in a good faith effort to pursue completion within the three-month period.

Amended by Chapter 349, 2013 General Session

32B-5-206. Seasonal retail license.

(1) If authorized in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license, the commission may in accordance with this section issue a seasonal retail license located in an area the commission considers proper.

(2) (a) A seasonal retail license shall be for a period of six consecutive months.

(b) A seasonal retail license issued for operation during a summer time period is known as a "Seasonal A" retail license. The period of operation for a Seasonal A retail license:

(i) begins on May 1; and

(ii) ends on October 31.

(c) A seasonal retail license issued for operation during a winter time period is known as a "Seasonal B" retail license. The period of operation for a Seasonal B retail license:

(i) begins on November 1; and

(ii) ends on April 30.

(3) In determining the number of each type of retail license that the commission may issue under the relevant part under Chapter 6, Specific Retail License Act:

(a) a seasonal retail license is counted as one-half of one retail license of the specific type of retail license; and

(b) each Seasonal A retail license shall be paired with a Seasonal B retail license of the same type of retail license.

Enacted by Chapter 276, 2010 General Session

32B-5-301. General operational requirements.

(1) (a) A retail licensee and staff of a retail licensee shall comply with this title and the rules of the commission, including the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a retail licensee;

(ii) individual staff of a retail licensee; or

(iii) both a retail licensee and staff of the retail licensee.

(2) (a) If there is a conflict between this part and the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license, the relevant part under Chapter 6 governs.

(b) Notwithstanding that this part refers to "liquor" or an "alcoholic product," a retail licensee may only sell, offer for sale, furnish, or allow the consumption of an alcoholic product specifically authorized by the relevant part under Chapter 6, Specific Retail License Act.

(c) Notwithstanding that this part or the relevant part under Chapter 6, Specific Retail License Act, refers to "retail licensee," staff of the retail licensee is subject to the same requirement or prohibition.

(3) (a) A retail licensee shall display in a prominent place in the licensed premises the retail license that is issued by the department.

(b) A retail licensee shall display in a prominent place a sign in large letters that

consists of text in the following order:

- (i) a header that reads: "WARNING";
 - (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";
 - (iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";
 - (iv) a header that reads: "WARNING"; and
 - (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v).
- (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size.
- (d) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.
- (4) A retail licensee may not on the licensed premises:
- (a) engage in or permit any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;
 - (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling; or
 - (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.
- (5) A retail licensee may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:
- (a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or
 - (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.
- (6) Upon the presentation of credentials, at any time during which a retail licensee is open for the transaction of business, the retail licensee shall immediately:
- (a) admit a commissioner, authorized department employee, or law enforcement officer to the retail licensee's premises; and
 - (b) permit, without hindrance or delay, the person described in Subsection (6)(a) to inspect completely:
 - (i) the entire premises of the retail licensee; and
 - (ii) the records of the retail licensee.
- (7) An individual may not consume an alcoholic product on the licensed premises of a retail licensee on any day during the period:
- (a) beginning one hour after the time of day that the period during which a retail licensee may not sell, offer for sale, or furnish an alcoholic product on the licensed premises begins; and
 - (b) ending at the time specified in the relevant part under Chapter 6, Specific

Retail License Act, for the type of retail license when the retail licensee may first sell, offer for sale, or furnish an alcoholic product on the licensed premises on that day.

Amended by Chapter 334, 2011 General Session

32B-5-302. Recordkeeping.

- (1) A retail licensee shall make and maintain a record showing in detail:
 - (a) quarterly expenditures made separately for:
 - (i) malt or brewed beverages;
 - (ii) liquor;
 - (iii) set-ups;
 - (iv) food; and
 - (v) any other item required by the department; and
 - (b) sales made separately for:
 - (i) malt or brewed beverages;
 - (ii) set-ups;
 - (iii) food; and
 - (iv) any other item required by the department.
- (2) A retail licensee shall make and maintain a record required by Subsection (1):
 - (a) in a form approved by the department; and
 - (b) current for each three-month period.
- (3) A retail licensee shall support an expenditure by:
 - (a) a delivery ticket;
 - (b) an invoice;
 - (c) a receipted bill;
 - (d) a canceled check;
 - (e) a petty cash voucher; or
 - (f) other sustaining datum or memorandum.
- (4) In addition to a record required under Subsection (1), a retail licensee shall make and maintain any other record the department may require.
- (5) (a) A record of a retail licensee is subject to inspection by an authorized representative of the commission and the department.
 - (b) A retail licensee shall allow the department, through an auditor or examiner of the department, to audit the records of the retail licensee at times the department considers advisable.
- (6) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this section.

Enacted by Chapter 276, 2010 General Session

32B-5-303. Purchase and storage of an alcoholic product by a retail licensee.

- (1) (a) A retail licensee may not purchase liquor except from a state store or package agency.
- (b) A retail licensee may transport liquor purchased from a state store or

package agency from the place of purchase to the licensed premises.

(c) A retail licensee shall pay for liquor in accordance with rules established by the commission.

(2) (a) (i) A retail licensee may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the retail licensee purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of this Subsection (2)(a) is a class A misdemeanor.

(b) (i) If a retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler licensee, the retail licensee shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the retail licensee is located, unless an alternate wholesaler is authorized by the department to sell to the retail licensee as provided in Section 32B-13-301.

(ii) Violation of Subsection (2)(b) is a class B misdemeanor.

(3) A retail licensee may not store, sell, offer for sale, or furnish an alcoholic product in a place other than as designated in the retail licensee's application, unless the retail licensee first applies for and receives approval from the department for a change of location within the licensed premises.

(4) A liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

Amended by Chapter 307, 2011 General Session

32B-5-304. Portions in which alcoholic product may be sold.

(1) A retail licensee may sell, offer for sale, or furnish a primary spirituous liquor only in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following requirements:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor;

(ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

(iii) the retail licensee shall designate a location where flavorings are stored on the floor plan submitted to the department; and

(iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

(b) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert; and

(c) a patron may have no more than 2.5 ounces of spirituous liquor at a time.

(2) (a) (i) A retail licensee may sell, offer for sale, or furnish wine by the glass or in an individual portion that does not exceed 5 ounces per glass or individual portion.

(ii) A retail licensee may sell, offer for sale, or furnish an individual portion of

wine to a patron in more than one glass if the total amount of wine does not exceed 5 ounces.

(b) (i) A retail licensee may sell, offer for sale, or furnish wine in a container not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.

(ii) A retail licensee may sell, offer for sale, or furnish wine in a container not to exceed 750 milliliters at a price fixed by the commission to a table of less than four persons.

(3) A retail licensee may sell, offer for sale, or furnish heavy beer in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(4) A retail licensee may sell, offer for sale, or furnish a flavored malt beverage in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(5) (a) Subject to Subsection (5)(b), a retail licensee may sell, offer for sale, or furnish beer for on-premise consumption:

(i) in an open original container; and

(ii) in a container on draft.

(b) A retail licensee may not sell, offer for sale, or furnish beer under Subsection (5)(a):

(i) in a size of container that exceeds two liters; or

(ii) to an individual patron in a size of container that exceeds one liter.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-5-305. Pricing of alcoholic product -- Other charge.

(1) (a) A retail licensee may sell, offer for sale, or furnish liquor only at a price fixed by the commission.

(b) A retail licensee may not sell an alcoholic product at a discount price on any date or at any time.

(2) (a) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at less than the cost of the alcoholic product to the retail licensee.

(b) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price that encourages over consumption or intoxication.

(c) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price for only certain hours of the retail licensee's business day, such as a "happy hour."

(d) A retail licensee may not sell, offer for sale, or furnish more than one alcoholic product for the price of a single alcoholic product.

(e) A retail licensee may not sell, offer for sale, or furnish an indefinite or unlimited number of alcoholic products during a set period for a fixed price.

(f) A retail licensee may not engage in a promotion involving or offering a free alcoholic product to the general public.

(3) As authorized by commission rule, a retail licensee may charge a patron for providing:

- (a) a service related to liquor purchased at the licensed premises; or
- (b) wine service performed for wine carried in by a patron in accordance with Section 32B-5-307.

Amended by Chapter 334, 2011 General Session

32B-5-306. Purchasing or selling alcoholic product.

(1) A retail licensee may not sell, offer for sale, or furnish an alcoholic product to:

- (a) a minor;
- (b) a person actually, apparently, or obviously intoxicated;
- (c) a known interdicted person; or
- (d) a known habitual drunkard.

(2) (a) A patron may only purchase an alcoholic product in the licensed premises of a retail licensee from and be served by an individual who is:

- (i) staff of the retail licensee; and
- (ii) designated and trained by the retail licensee to sell and serve an alcoholic product.

(b) An individual may sell, offer for sale, or furnish an alcoholic product to a patron only if the individual is:

- (i) staff of the retail licensee; and
- (ii) designated and trained by the retail licensee to sell and serve an alcoholic product.

(c) Notwithstanding Subsection (2)(a) or (b), a patron who purchases bottled wine from staff of the retail licensee or carries bottled wine onto the retail licensee's premises pursuant to Section 32B-5-307 may thereafter serve wine from the bottle to the patron or others at the patron's table.

(3) The following may not purchase an alcoholic product for a patron:

- (a) a retail licensee; or
- (b) staff of a retail licensee.

Enacted by Chapter 276, 2010 General Session

32B-5-307. Bringing onto or removing alcoholic product from premises.

(1) Except as provided in Subsection (3):

(a) A person may not bring onto the licensed premises of a retail licensee an alcoholic product for on-premise consumption.

(b) A retail licensee may not allow a person to:

- (i) bring onto licensed premises an alcoholic product for on-premise consumption; or
- (ii) consume an alcoholic product brought onto the licensed premises by a person other than the retail licensee.

(2) Except as provided in Subsection (3):

(a) A person may not carry from a licensed premises of a retail licensee an open container that:

- (i) is used primarily for drinking purposes; and

(ii) contains an alcoholic product.

(b) A retail licensee may not permit a patron to carry from the licensed premises an open container described in Subsection (2)(a).

(3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for on-premise consumption if:

(i) permitted by the retail licensee; and

(ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.

(b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the patron shall deliver the bottled wine to a server or other representative of the retail licensee upon entering the licensed premises.

(c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a wine service for a bottled wine carried onto the licensed premises in accordance with this Subsection (3).

(d) A patron may remove from a licensed premises the unconsumed contents of a bottle of wine purchased in the licensed premises, or brought onto the licensed premises in accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-5-308. Requirements on staff or others on premises -- Employing a minor.

(1) Staff of a retail licensee, while on duty, may not:

(a) consume an alcoholic product; or

(b) be intoxicated.

(2) (a) A retail licensee may not employ a minor to sell, offer for sale, furnish, or dispense an alcoholic product.

(b) Notwithstanding Subsection (2)(a), unless otherwise prohibited in the provisions related to the specific type of retail license, a retail licensee may employ a minor who is at least 16 years of age to enter the sale at a cash register or other sales recording device.

Amended by Chapter 307, 2011 General Session

32B-5-309. Ceasing operation.

(1) Except as provided in Subsection (8), a retail licensee may not close or cease operation for a period longer than 240 hours, unless:

(a) the retail licensee notifies the department in writing at least seven days before the day on which the retail licensee closes or ceases operation; and

(b) the closure or cessation of operation is first approved by the department.

(2) Notwithstanding Subsection (1), in the case of emergency closure, a retail licensee shall immediately notify the department by telephone.

(3) (a) The department may authorize a closure or cessation of operation of a retail licensee for a period not to exceed 60 days.

(b) The department may extend the initial period an additional 30 days upon:

- (i) written request of the retail licensee; and
- (ii) a showing of good cause.
- (4) A closure or cessation of operation may not exceed a total of 90 days without commission approval.
- (5) A notice required under this section shall include:
 - (a) the dates of closure or cessation of operation;
 - (b) the reason for the closure or cessation of operation; and
 - (c) the date on which the retail licensee will reopen or resume operation.
- (6) Failure of a retail licensee to provide notice and to obtain department approval before closure or cessation of operation results in an automatic forfeiture of:
 - (a) the retail license; and
 - (b) the unused portion of the retail license fee for the remainder of the retail license year effective immediately.
- (7) Failure of a retail licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:
 - (a) the retail license; and
 - (b) the unused portion of the retail license fee for the remainder of the retail license year.
- (8) This section does not apply to:
 - (a) an on-premise beer retailer who is not a tavern; or
 - (b) an airport lounge licensee.

Amended by Chapter 307, 2011 General Session

32B-5-310. Notifying department of change in ownership.

The commission may suspend or revoke a retail license if the retail licensee does not immediately notify the department of a change in:

- (1) ownership of the premises of the retail license;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors of the retail licensee; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:
 - (a) managers of the limited liability company; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-5-311. Use of breathalyzers.

- (1) As used in this section:
 - (a) "Breathalyzer" means:
 - (i) a device that uses electromechanical fuel cell sensor technology in the blood alcohol content testing process; or
 - (ii) a single-use, disposable alcohol breath tester that is cleared with the United States Food and Drug Administration as a Class 1 medical device with at least 99.8% accuracy and having a detection cut-off of 0.08 relative percent blood alcohol

concentration.

(b) "Calibration" means the manual setting of specific levels on a breathalyzer by a person trained to reset the device to ensure as accurate results as possible.

(c) (i) "Financial transaction card" means a card, code, or other means of access to a person's account issued to a person that allows the person to obtain, purchase, or receive goods, services, money, or anything else of value.

(ii) "Financial transaction card" includes:

- (A) a credit card;
- (B) a credit plate;
- (C) a bank services card;
- (D) a banking card;
- (E) a check guarantee card;
- (F) a debit card;
- (G) a telephone credit card; or
- (H) a device for access as defined in Section 7-16a-102.

(2) If a retail licensee voluntarily installs, or sells or otherwise provides, a breathalyzer on its premises:

(a) the breathalyzer may not store financial transaction card data or associate breathalyzer results with financial transaction card data;

(b) for a breathalyzer described in Subsection (1)(a)(i):

(i) the breathalyzer shall collect data that can be downloaded by a third-party that performs the calibration of the breathalyzer, except that the downloaded information may not be used for any purpose other than calibration;

(ii) the retail licensee shall ensure that a breathalyzer installed inside of the licensed premises is calibrated by a third-party the sooner of every:

- (A) 30 days; or
- (B) 300 uses;

(iii) the owner of the breathalyzer shall annually report to the department compliance with the calibration requirements of this section for the breathalyzer; and

(iv) the breathalyzer may be able to be shut down remotely; and

(c) the retail licensee shall post in a conspicuous location by the breathalyzer:

(i) a notice to the user of the breathalyzer that the timing of when a breathalyzer test is taken may affect the results of the breathalyzer test; and

(ii) a notice that states: "The National Transportation Safety Board has found that crash risk is consistently and significantly elevated by the time an individual reaches a blood alcohol content of 0.05."

(3) Data from a breathalyzer installed in the licensed premises of, or sold or otherwise provided by, a retail licensee may not be used for enforcement purposes.

(4) If a retail licensee or owner of the breathalyzer violates this section, the department may require the retail licensee to remove the installed breathalyzer described in Subsection (1)(a)(i) or not sell or otherwise provide a breathalyzer described in Subsection (1)(a)(ii).

Enacted by Chapter 235, 2014 General Session

32B-5-401. Title.

This part is known as the "Alcohol Training and Education Act."

Enacted by Chapter 276, 2010 General Session

32B-5-402. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-5-403. Alcohol training and education -- Revocation, suspension, or nonrenewal of retail license.

(1) The commission may suspend, revoke, or not renew a license of a retail licensee if any of the following individuals, as defined in Section 62A-15-401, fail to complete an alcohol training and education seminar:

- (a) an individual who manages operations at the licensed premises for consumption on the licensed premises;
- (b) an individual who supervises the furnishing of an alcoholic product to a patron for consumption on the licensed premises; or
- (c) an individual who serves an alcoholic product to a patron for consumption on the licensed premises.

(2) A city, town, or county in which a retail licensee conducts its business may suspend, revoke, or not renew the business license of the retail licensee if an individual described in Subsection (1) fails to complete an alcohol training and education seminar.

(3) A local authority that issues an off-premise beer retailer license to a business that is engaged in the retail sale of beer for consumption off the beer retailer's premises may immediately suspend the off-premise beer retailer license if any of the following individuals fails to complete an alcohol training and education seminar, an individual who:

- (a) directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or
- (b) sells beer to a patron for consumption off the premises of the off-premise beer retailer.

Enacted by Chapter 276, 2010 General Session

32B-5-404. Alcohol training and education for off-premise consumption.

(1) (a) A local authority that issues an off-premise beer retailer license to a business to sell beer at retail for off-premise consumption shall require the following to have a valid record that the individual completed an alcohol training and education seminar in the time periods required by Subsection (1)(b), an individual who:

- (i) directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or
- (ii) sells beer to a patron for consumption off the premises of the off-premise beer retailer.

(b) If an individual on the date the individual becomes staff to an off-premise beer retailer does not have a valid record that the individual has completed an alcohol

training and education seminar for purposes of this part, the individual shall complete an alcohol training and education seminar within 30 days of the day on which the individual becomes staff of an off-premise beer retailer.

(c) Section 62A-15-401 governs the validity of a record that an individual has completed an alcohol training and education seminar required by this part.

(2) In accordance with Section 32B-5-403, a local authority may immediately suspend the license of an off-premise beer retailer that allows staff to directly supervise the sale of beer or to sell beer to a patron without having a valid record that the individual completed an alcohol training and education seminar in accordance with Subsection (1).

Enacted by Chapter 276, 2010 General Session